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October 19, 2004

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VIA COURIER

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20554

Federal Communications Commission
Office of Secretary

Re: RM-11065; Reply to the Opposition of the National Cable & Telecommunications Association

Dear Ms. Dortch:

Enclosed for filing are an original and four (4) copies of the Reply to the Opposition of the National Cable & Telecommunications Association in the above-referenced docket. Please date stamp the enclosed extra copy of this filing. Should you have any questions, please do not hesitate to contact us at (202) 424-7500.

Respectfully submitted,

Brian McDermott / dUB

Paul O. Gagnier
Brian M. McDermott

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
)
Closed Captioning of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
Video Programming Accessibility)

RM - 11065

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Federal Communications Commission
Office of Secretary

**REPLY TO THE OPPOSITION OF THE NATIONAL CABLE &
TELECOMMUNICATIONS ASSOCIATION**

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Lois Maroney, President
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Dated: October 19, 2004

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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Closed Captioning of Video Programming)	RM - 11065
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**REPLY TO THE OPPOSITION OF THE NATIONAL CABLE &
TELECOMMUNICATIONS ASSOCIATION**

Pursuant to Commission Rule 1.405, Telecommunications for the Deaf, Inc. ("TDI"), by its undersigned counsel, National Association of the Deaf ("NAD"), Self Help for Hard of Hearing People, Inc. ("SHHH"), the Association of Late-Deafened Adults, Inc. ("ALDA"), and the Deaf and Hard of Hearing Consumer Advocacy Network ("DHHCAN") (collectively "Petitioners") hereby Reply to the Opposition of the National Cable & Telecommunications Association ("NCTA") filed on October 4, 2004.

The Commission will accept a petition for rulemaking when it meets the "minimum requirements as to form and substance" that are listed in Section 1.401 of the Commission's rules. See Amendments to Part 0, Sec. 0.281(b)(6), and Part 1, Secs. 1.401 and 1.405(d), of the Commission's Rules, with Respect to the Delegation of Authority to the Chief, Broadcast Bureau, and Procedures Regarding Petitions for Rule Making, *Memorandum Opinion and Order*, 79 FCC 2d 1, ¶ 2 (rel. June 19, 1980); see also, 47 C.F.R. §§ 1.401, 1.403. Moreover, the Commission has the authority to deny or dismiss a petition, prior to requesting comments, if it

determines that a petition is moot, repetitive, premature, frivolous, or plainly does not warrant consideration by the Commission. *Id.*, 47 C.F.R. § 1.401(e). The Commission did not dismiss the Petition in this case because it met the threshold requirements and presented issues that warrant the Commission's consideration.

The Petition requests that the Commission initiate a rulemaking proceeding whereby various parties would have the opportunity to present evidence in support of or in opposition to certain proposed changes to the rules relating to closed captioning. However, the NCTA, in various places of its Opposition, asserts that the Petitioners' claims are not supported with sufficient evidence in the Petition. The underlying Petition was intended to identify potential captioning problems and include a few sample real world examples to illustrate the point. The Petition was not intended to lay out all the evidence that such problems exist or provide an exhaustive record by which the Commission could judge whether to adopt proposed changes. Our intent was to highlight the areas that need to be discussed and request that the Commission open a proceeding and solicit evidence. As evidenced by the numerous comments filed by individuals in support of the requested Rulemaking, many individuals continue to face wide ranging issues concerning captioning. Those individuals should have an opportunity to be heard and will have that opportunity if the Commission grants the request for Rulemaking.

The NCTA states in its Opposition: "Improvements (with captioning) can always be made, and the cable industry is committed to working to improve these processes to better serve its deaf and hard of hearing customers."¹ The Petitioners agree that improvements can and should be made and believe that a rulemaking is an integral part of the improvement process.

¹ See Opposition of the National Cable & Telecommunications Association, at 2 (filed October 4, 2004).

Now that the Commission's captioning rules have been in effect for five years, it makes sense for the Commission to reexamine them and solicit evidence as to how to improve the regulations in order to ensure that all the deaf and hard of hearing individuals have the opportunity to use and enjoy video programming. Accordingly, the Commission should initiate a rulemaking proceeding as requested by Petitioners.

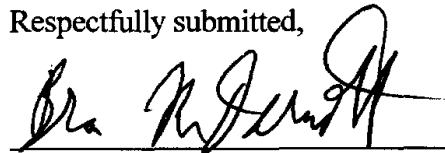
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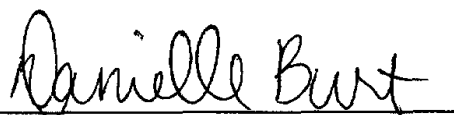
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Certificate of Service

I hereby certify that on this day, the 19th of October, 2004, a copy of the foregoing Reply to the Opposition of the National Cable & Telecommunications Association was served by courier to the following:

Daniel L. Brenner
Diane B. Burstein
Jill Lockett
National Cable & Telecommunications Association
1724 Massachusetts Avenue, NW
Washington, D.C. 20036

A handwritten signature in cursive script, reading "Danielle Burt", written over a horizontal line.

Danielle C. Burt